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6 December 2023

Ms Melisande Waterford  
General Manager  
Gas Markets Branch  
ACCC  
GPO Box 3131  
Canberra ACT 2601  
By email to: gascode@acc.gov.au

Dear Ms Waterford

### **Gas Market Code – consultation on proposed determinations**

Please find below Shell Australia's (**Shell**) submission in response to the consultation paper published by the ACCC dated 16 November 2023 and the proposed determinations under the *Competition and Consumer (Gas Market Code) Regulations 2023* (the **Code**) (the **proposed determinations**).

While Shell acknowledges the government's consideration of the various submissions it has made in relation to the Code, it notes that these additional proposed determinations add to significant pre-existing regulatory and compliance obligations. Increasing regulation does not drive efficient operation of the east coast gas market or encourage essential investment.

### **Compliance Burden**

The proposed determinations add to an environment where there are a number of significant information reporting reforms occurring concurrently and in which Shell already has separate reporting obligations to various other government bodies. While Shell welcomes the fact that the ACCC is intending to integrate this new reporting requirement with the current s95ZK notice process, it does not obviate the fact that this additional intervention is adding to an already significant compliance and reporting burden. Significant time and effort is expended by Shell in responding to the s95ZK notices. Accordingly, Shell recommends that:

- to avoid unnecessary duplication, the ACCC create one excel spreadsheet that satisfies the requirements of both s95ZK and s53ZT notices (including the proposed workbook). Reporting on the same topic across two documents will create both confusion and an unnecessary administrative burden. For example, for Shell's Walloons business, the proposed determinations require some information on offers over 12 months to be reported in the workbook. Separately under the s95ZK notice process, information must also be reported on some information on offers over 12 months and all information on offers under 12 months; and
- to the extent possible, the timing of the new s53ZT notice process should align with the s95ZK notice process, both in terms of the timeframe captured by the notice and the timing of the notice.

Shell had already invested in preparing tools and resources (that its teams are currently using) to ensure compliance with the Code. However, the proposed determinations include a new workbook that must be completed. Had this workbook been made available from the end of the transition period under the Code this would have reduced the compliance burden placed on covered suppliers. Further, from the

proposed determinations it is unclear whether the proposed workbook must be completed in real time or completed and submitted in response to each notice received from the ACCC.

If the intended requirement is completion in real time then this would create both a significant and duplicative compliance and administrative burden and would not allow for consistency in preparation of the response across s95ZK and s53ZT notices. Any opportunity for consistency is welcomed given that Shell's teams are currently working within an environment subject to significant levels of both regulatory reporting and change. In addition, a requirement for completion in real time does not take into consideration the limits of normal business practice. Should the ACCC elect to impose a requirement for completion in real time, then this should be limited to require data to be recorded in the workbook "as soon as practicable". For example, there may be activity over weekends and holiday periods where Shell's teams are unable to complete the workbook as offers are made and transactions occur due to staffing levels.

However, it is Shell's recommendation that the determination permits companies to retain this data in business systems and download to the workbook only as required to respond to a notice.

### **Section 33 – record keeping by supplier**

Under the proposed determinations it appears that the new record keeping requirement activates on the same day that the determination activates. This does not take into consideration the actions required by covered suppliers to implement the workbook – particularly in terms of aligning with existing compliance tools and staff training. Shell recommends that a reasonable transition window of not less than 2 months be incorporated to ensure that covered suppliers have time to implement the proposed workbook in advance of being required to start using it for record-keeping. Further guidance would also be appreciated on how often the proposed workbook will be required for submission to the ACCC.

A transition window should also be provided to ensure there is sufficient time for testing and review of the workbook by the ACCC to ensure it is compatible with upload into the new data portal. It is noted that not every field of the proposed workbook will be relevant to all transactions and that, in particular, data may be limited where a supplier is responding to a buyer-initiated offer. It is therefore essential, particularly when the ACCC moves to require submission of the workbook via the Data Portal, that sufficient flexibility is allowed for suppliers to leave blank cells when information is not available to them.

### **Section 34 – Supplier to publish information relating to available gas, etc.**

Shell understands the reasons for the requirement to publish the volume of uncontracted regulated gas likely to be available to the covered supplier, broken down for each quarter over a 24 month period and considers that this strikes the right balance. Shell would not be supportive of publication of an even more granular breakdown.

Breaking down annual information into quarters will be subject to assumptions and variables that will differ amongst suppliers given the individual circumstances of their production and portfolio positions. A number of suppliers have chosen to accompany s34 publications with assumptions and variables that impact the volume of uncontracted regulated gas likely to be available and it is likely that an indication of the nature of the quarterly breakdown assumptions (e.g. annual estimate, pro-rated over quarters) would be useful additional information that covered suppliers might choose to make available. This aligns with the objective under the Code of driving increased transparency of information in respect of available gas. Shell is supportive of the allowance of sufficient flexibility so that this can continue in a manner that suits each supplier.

## **Sections 34 & 35 – publication and reporting of information**

The proposed determination requires publication and reporting of required information, as soon as practicable, after 1 April and 1 October each year. These dates are sensible and strike a good balance by avoiding other dates that can create pressure such as early in the calendar year when staff are on leave or the end of the Australian financial year.

Thank you for the opportunity to provide input into the proposed determinations. We look forward to further engagement on the issues raised in this submission. Please contact Marion Carthew for matters relating to this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Virang Gadoya', with a stylized flourish at the end.

**Virang Gadoya**  
VP Commercial  
Shell Australia